

#### REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claim 18 has been cancelled, while claims 2 and 15 have each been made proper independent claims depending from claims 1 and 14, respectively. Claim 8 has been made proper independent claim and includes the limitations the base and any intervening claims. In addition, the claims have been amended for clarity.

Applicants believe that the above changes answer the Examiner's 35 U.S.C. 101 rejection of claims 1-13, and respectfully request withdrawal thereof.

The Examiner has rejected claims 1-7 and 14-21 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,021,386 to Davis et al. The Examiner has further rejected claims 10 and 13 under 35 U.S.C. 102(b) "as being anticipated by over Davis et al. (US 6,021,386) as evidenced by Jensen et al. (US 2004/0204936)". Applicants acknowledge that the Examiner has found claims 8, 9, 11 and 12 allowable over the prior art of record.

The Davis et al. patent discloses a coding method and apparatus for multiple channels of audio information representing three-dimensional sound fields.

As noted in MPEP §2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.

1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claims 1, 14 and 17 include the limitation "wherein the second portion is differentially coded with respect to the first portion". This limitation is supported in the specification as filed on page 11, lines 13-27, and Fig. 9.

Applicants submit that Davis et al. neither discloses nor suggests this limitation.

Applicants believe that the rejection of claims 10 and 13 under 35 U.S.C. 102(b) is improper in that, according to MPEP §2131.01, the only reasons for which multiple references are proper in a 102 rejection are when the extra references are cited to "(A) Prove the primary reference contains an "enabled disclosure;" (B) Explain the meaning of a term used in the primary reference; or (C) Show that a characteristic not disclosed in the reference is inherent." Since it should be clear from the Examiner's discussion that Jensen et al. is being used to support the Examiner's use of "Official Notice" to cover subject matter not disclosed in Davis et al., Applicants will treat the subject rejection as being under 35 U.S.C. 103(a).

The Jensen et al. publication discloses frequency-differential encoding of sinusoidal model parameters.

First, Applicants submit that Jensen et al. is an improper reference in that the filing date thereof, to wit, October 14,

2002, falls after the priority date of the subject application, in that the subject application is a 371 filing based on International Application No. PCT/IB03/01591, filed April 22, 2003, which claims a priority of April 22, 2002. Applicants note that the copies corresponding priority European applications were forwarded to the USPTO by WIPO, and that these European applications are in English.

Further, Applicants submit that neither Jensen et al. nor "Official Notice" supply that which is missing from Davis et al., i.e., "wherein the second portion is differentially coded with respect to the first portion".

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-17 and 19-21, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by           /Edward W. Goodman/            
Edward W. Goodman, Reg. 28,613  
Attorney  
Tel.: 914-333-9611